

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

**Richard Lowery**, on behalf of himself  
and others similarly situated,

Plaintiff,

v.

**Texas A&M University System**, et al.,  
Defendants.

CIVIL ACTION NO.  
4:22-cv-3091

JUDGE CHARLES ESKRIDGE

**PLAINTIFF’S NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff Richard Lowery respectfully advises the Court of the Fifth Circuit’s decision earlier today in *Jackson v. Wright*, No. 22-40059 (5th Cir.). *Jackson* rejected a sovereign-immunity defense from university officials that resembles the sovereign-immunity argument asserted by the defendants here. *Compare* slip op. at 5–8 (attached as Ex. 1) *with* Mot. to Dismiss, ECF No. 22, at 12–14; Reply Br., ECF No. 26, at 5–6. *Jackson* holds that “a mere scintilla of enforcement” authority is all that is needed to make university officials proper defendants in an *Ex parte Young* action, and that the mere existence of a defendant’s “governing authority” over a university is enough to satisfy that standard. *See* slip op. at 6 (“[T]he Board defendants have the required ‘scintilla of enforcement’ due to their governing authority over UNT.”). Each of the named defendants in this case has “governing authority” over Texas A&M, so they have more than the required “scintilla of enforcement” authority over the university’s hiring decisions.

*Jackson* also reaffirms that mere allegations of continuing or future injury are enough to beat back a facial challenge to standing at the motion-to-dismiss stage, and that a plaintiff's allegations must be accepted as true when ruling on standing at this stage of the litigation. *See slip op.* at 9 (“At the motion to dismiss stage where we must accept all Jackson’s allegations as true, he has plainly alleged both a continuing and a future injury sufficient to confer standing for him to seek prospective relief.”).

We have attached a copy of *Jackson* to this notice.

Respectfully submitted.

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Dated: September 15, 2023

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## CERTIFICATE OF SERVICE

I certify that on September 15, 2023, I served this document through CM/ECF

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